

**IN THE HIGH OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 131 OF 2013

SALUM MUYA.....	1ST PLAINTIFF
SALUM RAJABU	2ND PLAINTIFF
HUSSEIN MKWIZU	3RD PLAINTIFF
ASIA JUMANNE.....	4TH PLAINTIFF
RAHMA GODFREY	5TH PLAINTIFF
JACOB MATANDU	6TH PLAINTIFF
HAWA SHABAN @ IBRAHIM	7TH PLAINTIFF
ROSE MUSHI	8TH PLAINTIFF
ERASMOS REMEN @ MWANGA	9TH PLAINTIFF
EMMANUEL MAPAMBA	10TH PLAINTIFF
JUDICA SWAI	11TH PLAINTIFF
MUSSA MAIGE	12TH PLAINTIFF
REVOCATUS SISTUS	13TH PLAINTIFF

VERSUS

DISTRICT EXECUTIVE DIRECTOR, KIBAHA DISTRICT COUNCIL	1ST DEFENDANT
DAVID ROBERT MAKANGE	2ND DEFENDANT

Date of the Last Order: 21/12/2017

Date of the Judgment: 27/2/2018

JUDGMENT

Makuru, J.:

The Plaintiffs are natural persons residing and working for gain at Kibaha and Dar es Salaam. The 1st Defendant is a Local Government Authority established under the Local Government (District Authority) Act, 1982 while the 2nd Defendant is a natural person living and working for gain in Dar es Salaam.

On 10th June, 2013 the Plaintiffs presented for filing this case. The facts of the case as narrated in the Plaint, significantly speak for themselves briefly as follows: On diverse dates between 2011 and 2012 each Plaintiff was duly allocated undeveloped land by the Sub Ward Government Authority (Serikali ya Kitongoji cha Msongola, Mlandizi). According to them, on 12th April, 2013 Janga Ward Executive Officer as a subordinate Officer of the 1st Defendant lawfully endorsed allocation of the said undeveloped land. Thus, each Plaintiff developed his/her land, including cultivation of different crops.

On 5th March, 2012 it is alleged that the 1st Defendant purporting to act on official capacity issued a letter to the Chairman of the Sub Ward of Msongola (Mwenyekiti wa Kitongoji cha Msongola) which, among other things, claimed that his records show that Mr. Robert Makange, the 2nd Defendant in this case, is the rightful owner of the land allocated to the Plaintiffs since way back in 1990. Which fact is evidenced by a Title Deed. The Plaintiffs pray for Judgment and Decree against the Defendants as follows:

- a) An order to declare all Plaintiffs as lawful owners of suit Land located at Msongola-Mlandizi Kibaha.
- b) An order for vacant possession in favour of Plaintiffs.
- c) An order of payment of Tshs. 200,000,000/= being general damages.
- d) Costs of this suit.
- e) Any other Order(s) or Relief(s) as this Honourable Court may deem fit to grant.

In the 2nd Defendant's amended Written Statement of Defence, apart from denial of each and every allegation of fact contained in the plaint, the 2nd Defendant filed a counter claim praying for Judgment and Decree as follows:

- i. A declaration that the Plaintiffs are trespassers in the suit premises.
- ii. A declaration that the 2nd Defendant is entitled to exclusive and unimpeded right of possession and occupation of that entire suit property till the land allocation project is concluded.
- iii. Special damages to the tune of Tshs. 61,239,150/=.
- iv. General damages for trespass.
- v. Costs of the counter claim together with interest thereon at such rate and for such period of time as this Honourable court may deem fit and just to grant.
- vi. Any such other or further reliefs as this Honourable Court may deem appropriate.

Before the Commencement of the trial the following issues were framed and agreed by the parties:

1. Whether the Plaintiffs are rightful owners of the land in dispute.
2. Whether "Serikali ya Kitongoji cha Msongola" had the power or authority to allocate undeveloped land to the Plaintiffs.
3. Whether the second Defendant has a lawful title over the land in dispute.

4. If the answer to issue No. 2 above is answered in the affirmative, whether Janga Ward Executive Officer had power and authority to endorse allocation of undeveloped land to Plaintiffs.
5. Whether the Plaintiffs developed the land in dispute.
6. To what reliefs the parties are entitled.

To prove their case, the Plaintiffs called a total number of 10 witnesses. Salum Kilango Muya (PW1), the 1st Plaintiff in this case, testified to the effect that he resided at Mlandizi Msongola and that he was a peasant. He stated that he had been a resident of Msongola for twenty years. He said that in the year 2011 their Village Chairman convened a meeting for Msongola Sub Ward residents. At the meeting, he said that the Chairman informed them that all the undeveloped farms should be given to residents of Msongola.

According to him, after the meeting it was agreed that the undeveloped farms which were hazardous to Msongola residents should be distributed first. He told the court that the undeveloped farm which was highly hazardous and unsafe was one, which is herein after referred to as the farm in dispute, was accordingly distributed to residents of Msongola. He further testified that he was allocated a portion of the said hazardous farm on 15/12/2011. He also said that he was given a Certificate of Occupancy (Hati ya kumiliki eneo) by the Village Authority.

He tendered the alleged Certificate of Occupancy, without objection, titled "*Hati ya Kumilikiwa Eneo*" dated 15/12/2011 with Registration No. 110 signed by the Village Chairman, Secretary and himself (PW1). He said that

after being allocated the portion of the farm he was directed to clear the area within three (3) months. He further told the court that all those who were allocated land were also required to cultivate and develop the area. He said that he cultivated the area he was allocated and planted various crops including pineapples, peas and cassava. He also said that he constructed a temporary residential structure.

Later, he said that he heard that they have invaded the farm in dispute and that there was a legal owner. He informed the court that they were told that there was a letter from the District Executive Director (DED), Kibaha that the farm in dispute was legally owned by someone else.

After a follow up with the Sub Ward Chairman, he said that they were given the number of the Certificate of Occupancy of the farm in dispute. He said that further follow ups with the Ministry of Lands disclosed that it was true the farm in dispute belonged to one David Robert Makanga and that he was given a Title Deed but it was revoked by the Government. After they were informed by officials from the Ministry of Lands that the Right of Occupancy had been revoked, he said that they went on with the clearance of the land they were allocated.

He also testified that DED, Kibaha ordered the Sub Ward Chairman to stop them from clearing and developing the farm in dispute. He elaborated further that the Sub Ward Chairman wrote a letter to the District Commissioner (DC) so that he can listen to their problems regarding the farm in dispute. The DC sent the District Administrative Secretary (DAS).

According to him, DAS ordered them to stop developing the land in dispute pending completion of the survey which was done by DED Kibaha and David Robert Makange the 2nd Defendant, whom it was alleged that he was the legal owner of the farm in dispute. He said that they felt that justice was not done. They addressed the Regional Commissioner in regard to the dispute but according him, he did not respond. They went on developing the allocated plots in the farm in dispute until when they were arrested by the police in 2012 and sent to Mlandizi Police Station. The next day a Criminal Charge was preferred against them for criminal trespass and destroying property. He told this court that the said criminal case has been stayed pending the hearing and determination of this case. He prayed that the Plaintiffs, including him, be declared the legal owners of the plots in the farm in dispute and that, they be paid compensation of Tshs. 200,000,000/= (Two Hundred Million) only and costs.

Rahma Godfrey (PW2) who is the 5th Plaintiff, Rose Mushi (PW3) the 8th Plaintiff, Salum Rajabu Salum (PW4) the 2nd Plaintiff, Revocatus Sisti (PW5) the 13th Plaintiff, Hawa Shabani (PW7) the 7th Plaintiff and Erasmus Mwanga (PW8) the 9th Plaintiff narrated almost the same story like Salum Kilango Muya (PW1). They alleged that they were also allocated plots from the farm in dispute by the Chairperson of Msongola Sub Ward, one Nusura Ngwalu (PW6). Their alleged Certificates of Occupancy were tendered in court as **Exhibits P2 – P5 and P8 – P9 respectively.**

Mrs. Nusura Ngwalu (PW6) testified to the effect that she was a resident of Msongola Sub Ward, Janga Ward, Mlandizi Township and Kibaha District

within Coast Region. She said that she had been a resident of the said Sub Ward for more than 22 years. In 2010, she contended that she was the Chairperson of Msongola Sub Ward. Her duties were to supervise development activities and, security and peace within the Sub Ward. She also said that she used to receive directives from her superiors and made sure that they were implemented. Her immediate boss was the Ward Executive Officer (WEO).

According to her, WEO received directives from DED Kibaha. She testified in court that in 2010 she received directives from WEO in respect of undeveloped hazardous farms. She said that she was directed to distribute or allocate the undeveloped hazardous farms to residents of Msongola Sub Ward. She clarified that the directives were both made orally and in writing.

After receiving the directives, she said that she convened a meeting in 2011. She told the court that the Chairman of the meeting was their Ward Councilor. She said that she attended the meeting as the Sub Ward Chairperson. She also said that she signed the minutes of the meeting as the Chairperson of the Sub Ward and the Secretary was Mr. Gabriel Majumba. She tendered the said minutes, without objection, as **Exhibit P6**.

She further said that after receiving the directives and after the meeting she started allocating the farm in dispute, the 2nd Respondent's farm, to residents of Msongola Sub Ward. She said that she allocated plots to the

residents according to their needs. It was based on the ability of the person to clear and develop the allocated plot.

It was her contention that those allocated the plots were given conditions that the plots were supposed to be cleared within three months. Failure of which, the plot was to be given back to the Sub Ward Government Authority. This witness also tendered the alleged letter from WEO that she should distribute the undeveloped farms. The said letter was also tendered without objections as **Exhibit P7**. It was titled "**MAENEO YA ARDHI YALIYOTELEKEZWA NA YALIYOWAZI KATA YA JANGA**". The letter was dated 12/4/2013.

She further narrated that she was later told by the people who were allocated the plots that they were arrested by the police and placed in remand custody at Mlandizi Police Station. She said that she was able to bail out the 13 people who were in police custody. She insisted that the farm in dispute was a hazardous undeveloped farm and it had remained that way for a long time. She testified that such farm needed to be cleared and developed.

When cross examined by Mrs. Ndagala, learned counsel for the 1st Defendant, PW6 admitted that allocation of Land was not among her duties as the Chairperson of Msongola Sub Ward. In further cross examination she said that she placed notices on the undeveloped farms for the owners to clear and develop their farms. She could not tender a copy of the said notice on allegation that her house was invaded by bandits and most of her

documents disappeared. Although she said that she reported the matter to the police, she had no document to prove the same.

She also said that in the alleged hazardous undeveloped farms women were raped. According to her, there was also an attempt to steal a motorcycle. She also admitted to have received a letter from DED that she should stop people from developing the allocated plots in the farm in dispute. She stated that she abided to DED's directives but those people allocated the plots refused to adhere to the directives.

In cross examination, she told the court that she did not retrieve the alleged certificates from those she allocated the plots. She also clarified that the document she gave those people who were allocated plots was not a Certificate of Occupancy in the real sense but it was some sort of a permit to clear the land.

She also clarified that legally she was not allowed to issue a Certificate of Occupancy which is only issued by the Ministry of Lands. When cross examined in respect of **Exhibit P4**, one of the alleged Certificate of Occupancy, which was signed on 16/11/2011 before the meeting was conducted on 22/11/2011, she said that it was just an omission.

Rashid Ramadhani Magarasa (PW9) testified that he was a resident of Msongola since birth. He further testified that he shared a boundary with an undeveloped Land. According to him, the said undeveloped Land was abandoned by some of the residents who were moved to other areas

during Operation Vijiji. He further stated that the undeveloped Land was between Msongola Disunyara and Changereni Villages. Thus, from one village to another people had to pass through the said undeveloped Land which was some sort of a forest. He told the court that people who passed through the forest, especially at night, were beaten up and robbed their properties such as bicycles and cell phones.

He said that he reported the matter to the Village Authority of Msongola. The Village Chairperson, Ms. Husna Ngwani and other Villagers convened a public meeting. According to him, it was decided that the undeveloped land or forest be distributed to Villagers from Msongola, Isanyara and Chekeleni. He said that he did not attend the meeting and he was not among those allocated land.

When cross examined by Mr. Deogratius Godfrey, learned counsel for 2nd Defendant, he admitted that the said undeveloped land was once cultivated and cashewnut trees were planted by one Mr. Adittes Efstallow from UNICO. He also said that he knew David Robert Makange, the 2nd Defendant but he didn't know he was the owner of the farm in dispute.

The last witness was Omari Ngarawe (PW10). He also said that he was a resident of Msongola from 1992. He stated that the farm in dispute was not safe because criminals used to hide in that area. They used to commit crimes in the village and took coverage in farm in dispute.

After criminal incidences were reported to the Sub Ward Chairperson, Nusura Ngwaru, Janga Ward Councilor visited their village. He said that a

meeting was convened to discuss the criminal incidences and it was agreed that the Ward Councilor to look for a solution. A second meeting was convened after three weeks whereby it was agreed that the owner of the farm in dispute be summoned and the bandits to be traced and arrested. They were later informed that, the Ward Councilor's and the Sub Ward Chairperson's efforts to trace the owner of the farm in dispute proved futile. He said that it was agreed that the farm in dispute be distributed to Msongola Villagers. According to him, the Ward Councilor, Sub Ward Chairperson, Ten Cell Leader and Members of the Land Allocating Committee participated in allocating plots to villagers. After about one year and a half, he said that it was alleged that the owner of the farm in dispute went to the village and arrested the People who were allocated the plots.

In cross examination by Mr. Lusa Adwin, learned Solicitor for the 1st Defendant, this witness said that Msongola used to be a Village until in 2010 when it became a Sub Ward. Thus, when the meeting was convened it was a Sub Ward.

After the close of the Plaintiff's case, the defence called two witnesses. The first defence witness was Frank David Mwalembe (DW1) who gave evidence in court to the effect that he worked with Kibaha District Council in the Department of Land and Natural Resources as Land Officer. His duties included Land Administration, Land Rent Assessment, Inspection of Development of various plots and other duties assigned to him by his employer.

He testified further that he knew the farm in dispute, Farm No. 736 Msongola/Lisunyara. According to him, the owner is David Robert Makange. Initially, he said that the land belonged to a Greek Company and Robert Makange. They were joint owners. He explained that the said farm was later sub divided into two farms, Farms No. 736 and 735. After the sub division, Robert Makange who was one of the joint owners of Farm No. 736 passed away. This witness told the court that after his death, Robert's share was transferred to his wife, Mrs. Robert Makange who later transferred her share to her son David Robert Makange, the 2nd Defendant in this case.

In the last transfer, he said that the Urban and Planning Act, No. 7 of 2007 was amended declaring that Mlandizi Township Area was to be developed in accordance with the Law. Owners of big farms were ordered to develop their farms in accordance with the Law. Thus, as Plot No. 736 was more than 300 acres, there was a need to change its use from farming and pastoralism to residential and business purposes.

As regards Farm No. 736, he said that the owner of the farm in collaboration with Kibaha District Council followed the necessary procedures to change the land use by conducting a survey of plots in the farm in dispute and surrendering the Right of Occupancy. The owner applied for change of Land use of the farm in dispute from Kibaha District Council and later to the Commissioner for Lands.

In the process of surveying the farm in dispute, he said that they discovered that several people had trespassed into the farm claiming that they bought plots from the Sub Ward Chairperson. According to him, **Exhibit P4** titled "Hati ya Kumiliki Eneo" is not a legal document or Title Deed. He elaborated further that under section 25 of the Land Act, No. 4 of 1999 it is only the Commissioner for Lands who can issue a Title Deed or Right of Occupancy. Under the same provision, an authorized Land Officer in District can also be appointed to represent or act on behalf of the Commissioner. He was of the view that Exhibit P4 was not signed by an authorized Land Officer.

In principle, he said that **Exhibit P4** is not a legal document and that it should not be considered at all. He further stated that there was no legal development made by the trespassers. He was of the stand that the Plaintiff's claim is baseless because the farm in dispute was surveyed in accordance with the law and there was a Right of Occupancy since 1992. Thus, the Plaintiffs should respect the boundaries of the farm in dispute. This witness was able to identify a copy the Right of Occupancy of the farm in dispute because of the original owner's name and the two transfers. The said copy was attached to the 2nd Defendant's Written Statement of Defence as Annexure DAO 1. The document showed that the last owner of the farm in dispute is David Robert Makange, the 2nd Defendant in this case. According to him, the original Right of Occupancy was surrendered to the Ministry of Lands, Settlement and Human Development after change of land use.

When cross examined by Mr. Bakari learned counsel for the 2nd Defendant, this witness maintained that the Plaintiffs invaded the farm in dispute and destroyed the beacons and trees therein. He also said that even after surrender of the documents the legal owner of the farm in dispute is still recognized and the trespassers and the public in general were addressed in writing through the Sub Ward Chairperson of Msongola.

David Robert Makange (DW2), the 2nd Defendant, testified that he was the legal owner of the farm in dispute. He told the court that he has a Right of Occupancy over the farm in dispute. Like DW1, he narrated how the farm in dispute changed hands from the Original owners to him. He tendered a copy of the Title Deed of the Farm in Dispute as **Exhibit D1**.

This witness testified further that the farm in dispute was transferred to him by his mother Tabea Robert Makange in 2011 through a Deed of Gift. The said Deed of Gift made on 24th December, 2010 was tendered and admitted as **Exhibit D2**. After following the relevant procedures, he said that in January, 2012 the Title Deed was officially transferred to his name.

He later contacted the DED, Kibaha so that he can be advised on the land use of the farm in dispute. According to him, that is when he was informed there was a change in land use of the farm in dispute from farming to residential, business and Industry. He told this court that he decided to survey the farm for residential and business purposes. DED directed him to prepare Town Planning Drawings and survey the area. Thus, he was directed to surrender the Title Deed to the Commissioner for Lands so that

the land can be officially surveyed. A certified copy of the Deed of Surrender in respect of the farm in dispute belonging to David Robert Makange (2nd Defendant) was tendered and admitted as **Exhibit D3**.

After the surrender, he said that he received a copy of a letter from the Commissioner for Lands addressed to DED, Kibaha District Council that he was allowed to proceed with the survey. After that he narrated that he entered into a contract with Ardhi Plan Limited to develop the Survey Project. The said Survey Contract was tendered, without objection, as **Exhibit D4**.

In the initial preparations for the project, he told this court that he noted that there were people who had invaded into the farm in dispute. According to him, they were more than 300 people. He stated that he lodged his complaint with DED, Kibaha through a letter dated 2nd March, 2012. DED responded by a letter addressed to the Sub Ward Chairperson, Msongola. A copy of the letter was served on him. The said letter from DED was tendered and admitted in court as **Exhibit D5**.

He went on to say that some of the intruders into the farm in dispute are the Plaintiffs in this case. He informed the Court that he reported the matter to the police and some of the trespassers were arrested and a criminal case was preferred against them. When the accused were bailed out, he instituted this case. He explained that the Criminal Case has been stayed pending the determination of this case. To conclude, he prayed for the reliefs indicated earlier.

After the close of the defence case both sides offered final submissions. I thank both sides for their well-researched and analyzed submission. It has been of great assistance to the court.

Regarding the 1st issue on whether the Plaintiffs are the rightful owners of the Land in dispute, Mr. Magusu Mugoka learned counsel for the Plaintiffs submitted that the Plaintiffs are the rightful owners of the disputed plots. He argued that they were allocated the said plots legally by the Local Government Authority of Msongola.

Mr. Lusa Edwin, learned Solicitor for the 1st Defendant was of the view that, as the farm in dispute was within Mlandizi Township, it is regulated by the Land Act, Cap 113 R.E. 2002. According to him, the said Act provides for the proper procedure for Land allocation. He referred to section 12(1) of the said Act which provides:

"The Minister shall establish committees at appropriate levels of Government to be called the Land Allocation Committees to advise the Commissioner on the exercise of his power to determine applications for rights of occupancy."

Basing on the above quotation, he argued that the Land Allocation Committee is the proper body to advice the Commissioner for Lands for allocating Land within a Township Authority. Thus, land allocation by a Sub Ward Chairperson, as in the present case, is not recognized by the law. He further argued that under section 10 of the Land Registration Act, Cap 334

R.E. 2002 it is provided that it is the Commissioner for Lands who can issue a Certificate of Occupancy. He further stated that the District Land Officer (DW1) testified and tendered Exhibit D1, a copy of Certificate of Right of Occupancy, that the farm in dispute belongs to the 2nd Defendant (DW2).

Mr. Deogratius Godfrey, learned counsel for the 2nd Defendant argued that the record shows that the farm in dispute is still owned by the 2nd Defendant and the Plaintiffs are not recognized by the law as rightful owners of the land in dispute. He further argued that the act of surrendering the Title Deed of the farm in dispute, Farm No. 736 for survey of plots for change of Land use does not revoke the Right of Occupancy of the 2nd Defendant.

After considering the argument advance by both sides, with respect, I agree with both learned counsel for the Defendants that the Sub Ward Chairperson and the members of the alleged Land Allocation Committee are not among the legal authorized persons to allocate Land. As testified by Frank David Mwalembe (DW1) and David Robert Makange the 2nd Defendant (DW2), the 2nd Defendant followed all the relevant procedures to acquire the farm in dispute. The relevant document are in his name, including the Title Deed (Exhibit D1). It is nowhere on record that his Title Deed or Certificate of Occupancy has been revoked. In that respect the first issue is answered in the negative.

As regards the 2nd issue on whether "Serikali ya Kitongoji" has the power to allocate Land within Township Local Authority, the Plaintiff's counsel

answered this issue in the affirmative. Mr. Lusa Edwin and Mr. Deogratus Godfrey learned counsel for the 1st and 2nd Defendants respectively were of the view that the Sub Ward Chairperson of Msongola is not covered by Section 12 (1) of the Land Act, Cap 133 R.E 2002. Hence, the whole process of Land allocation by the Sub Ward Chairperson was null and void.

I entirely agree with both learned counsel for the defence that the Sub Ward Chairperson is not covered by section 12(1) of the Land Act. It is also nowhere indicated that the names of the alleged members of the Land Allocation Committee have been published in the gazette and posted up in the Ministry's Headquarters and district offices as required under section 12(4) of the same Act. Furthermore, Mrs. Nusura Ngwalu (PW6) who was the Sub Ward Chairperson of Msongola Sub Ward when cross examined by Mrs. Ndagala, learned counsel for the 1st Defendant, she admitted that allocation of Land was not among her duties. Hence, the second issue on whether "Serikali ya Kitongoji cha Msongola" had the power or authority to allocate undeveloped land to the Plaintiffs is also answered in the Negative.

Having answered the 1st and 2nd issue in the negative it follows that the 2nd Defendant was the lawful owner of the farm in dispute as testified by DW1 and DW2 and supported by the Defence Exhibits tendered in court. Therefore, the 3rd issue on whether the 2nd Defendant has a lawful title over land is answered in the affirmative.

As regards the 4th issue on whether Janga WEO had power and authority to endorse allocation of undeveloped Land to the Plaintiffs, counsel for the Plaintiffs answered this issue in the affirmative. Learned counsel for the 1st and 2nd Defendants argued that WEO had no power to endorse land allocation.

I join hands with both learned counsel for the Defendants that WEO had no power to endorse Land allocation as he is not covered by section 12 of the Land Act. As the 2nd issue was answered in the negative, it follows that the 4th issue is also answered in the negative.

On the 5th issue on whether the Plaintiffs developed the Land in dispute, the Plaintiffs argued that they had developed the allocated plots. On the other side, learned counsel for the 1st and 2nd Defendants argued that neither of the Plaintiffs proved that they built houses in the farm in dispute by tendering building permits as required by Law. The 2nd Defendant cited Section 29(1) of the Urban Planning Act, No. 8 of 2007 which prohibits land development within a planning area without a building permit. As regards destruction of crops, they argued that there is no proof. Counsel for the 1st Defendant went further and cited Section 110 of the Evidence Act, Cap 6 R.E 2002 that the one who alleges must prove. He submitted that the allegations have not been proved.

I am in all fours with the Defendants that the one who alleges must prove as stipulated in section 110 of the Evidence Act. The said provision provides that:

"110 (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

In the present case there is no proof that the Plaintiffs constructed the alleged houses and their crops were destroyed.

On the last issue on what reliefs the parties are entitled to, Mr. Mugoka submitted that the Plaintiffs be granted the prayers in the plaint with costs.

On the defence side, Mr. Edwin, learned Solicitor for the 1st Defendant and Mr. Deogratius Godfrey learned counsel for the 2nd Defendant submitted that the Plaintiff's case be dismissed in its entirety with costs. In addition Mr. Godfrey prayed that his counterclaim against the Plaintiffs be granted as prayed with costs.

As the 1st, 2nd, 4th and 5th issues have been answered in the negative, I am of the view that the Plaintiffs' case has no merit. As regards the prayers in the counter claim, the Plaintiffs are declared trespassers in the suit premises. The 2nd Defendant is entitled to exclusive and unimpeded right of possession and occupation on the suit property trespassed by the Plaintiffs.

As there are more than 300 trespassers as stated by the 2nd Defendant this Judgment cannot cover the entire suit property as the other trespassers are not parties to this suit.

As for special and general damages, there is no proof that it is the Plaintiffs in the main case who exclusively destroyed the beacons and property as there is indication that there are other trespassers. The benefit of doubt goes to the Plaintiffs.


For the above stated reasons, the main suit is dismissed and the counter claim is upheld to the extent provided above with costs.



C.W. Makuru
JUDGE
27/2/2018

Court:

Judgment delivered in court this 27th day of February, 2018 in the presence of the 2nd, 7th-11th and 13th Plaintiffs, Ms. Grace Muhagama learned counsel for the 1st Defendant and Mr. Deogratius Godfrey learned counsel for the 2nd Defendant and in the absence of the 1st, 3rd – 6th and 12th Plaintiffs. Right of appeal explained.



C.W. Makuru
JUDGE
27/2/2018